

December 13, 1967

CONGRESSIONAL RECORD — SENATE

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for June 26, 1967, at page 7) reads, in part, as follows:

"Stokely Carmichael led a march through the streets of Boston's heavily Negro Roxbury section Sunday and told Negroes they must take control of the land and stores in their areas.

"We will control things in our communities by any means necessary," he told a rally in Franklin Park.

"If hunky (the white man) gets his store bombed out every Friday or Saturday," Carmichael said, "he's going to have to sell it to us."

"He also told the crowd that the only way to stop 'racist aggression' by police 'is by armed resistance.'

Finally, *The South Bend Tribune* for July 26, 1967, at page 9, carried the following AP dispatch from Havana:

"Stokely Carmichael says Negroes in American cities are going to wage a guerrilla 'fight to the death,' the Cuban news agency reported Tuesday as the U.S. black power leader arrived in Havana for a revolutionary conference.

"The Prensa Latina agency quoted the fiery 26-year-old Negro as saying: 'In Newark we applied war tactics of the guerrillas. We are preparing groups of urban guerrillas for our defense in the cities. The price of these rebellions is a high price that one must pay. This fight is not going to be a simple street meeting. It is going to be a fight to the death.'

If you have heard him on radio, you know that his language is so impassioned that he sometimes becomes almost incoherent. And he speaks to restless young Negroes, many, if not most, of draft age, who idolize him. The remarks I have quoted above from *The National Guardian* must be judged in this context. And their effectiveness, at least according to a column in the April 23, 1967, issue of *The Daily Worker* (page 9) is obvious:

"Led by Stokely Carmichael and marching behind the banner of the Black United Action Front, coordinating committee for the peace marchers in Harlem, the parade evoked sympathetic comments from many onlookers.

"Carmichael was besieged particularly by young Harlemites who eagerly shook his hand. A number asked for his autograph.

THEME

"The theme of the marchers, 'Hell no; we won't go!', won the greatest response along the line of march, especially from draft-age youth. And it was evident from the determined expression on many faces that for many it was not just a march slogan.

"A rhythmic chant taken up repeatedly by the marchers seemed to express the mood of large numbers of onlookers.

"It was:

"'We'll fight in Mississippi, in Watts, in Birmingham, in Harlem, but not in Vietnam.'

If Schenck is followed, it is obvious, I submit, that Stokely Carmichael is guilty of attempting to sabotage the draft and should be prosecuted without further delay. There are some, however, who suggest that the authority of Schenck was destroyed by *Abrams v. United States*,¹⁵ *Schaefer v. United States*,¹⁶ and *Pierce v. United States*,¹⁷ because Justices Holmes and Brandeis dissented in those cases.

They did not dissent, however, in *Frohwerk v. United States*,¹⁸ or in *Debs v. United States*.¹⁹ Like Schenck these were prosecutions under the Espionage Act of 1917. In *Frohwerk* the defendants were found guilty on the basis of articles in a newspaper they published. In *Debs* the basis of the conviction

was a speech the defendant had made. In both cases the convictions were affirmed by the Supreme Court and in both Mr. Justice Holmes wrote for a unanimous Court.

The authority of Schenck is supported, moreover, by *Gitlow v. New York*²⁰ and *Whitney v. California*.²¹ In *Gitlow*, Justices Holmes and Brandeis dissented, as in *Abrams*, *Schaefer* and *Pierce*. In *Whitney* the same Justices concurred in the Court's judgment, which affirmed a conviction under the California Criminal Syndicalism Act, this time in an opinion by Mr. Justice Brandeis. In both cases, however, they cited and relied on Schenck. Indeed, in *Abrams* Mr. Justice Holmes, speaking for Mr. Justice Brandeis as well as himself, affirmed his faith in Schenck.

Those who brush aside the Schenck case argue that the Universal Military Training and Service Act (Title 50, U.S.C. App. § 462 (a)) is violated only by attempting to persuade specific persons to evade their duty under that act. There are only a few judicial decisions involving Title 50, U.S.C. App. § 462 (a), e.g., *Gara v. United States*²² and *United States v. Miller*.²³ Each involved the proscribed "counseling and aiding and abetting" in respect of specified individuals. But I find nothing in the opinion in either case suggesting the decision turned on that fact. In *Gara* the contrary is explicitly stated. This is demonstrated by the following excerpts from the opinion at pages 40-42. A letter written by the defendant to the United States Attorney in Toledo contained the following:

"Appellant also signed a pledge in 1948, stating, 'I shall in every way possible assist and support Non-registrants.' Evidence was presented to the effect that at a meeting held in Reading, Pennsylvania on August 25, 1948, he advocated that men of draft age refuse to register under the Selective Service Act of 1948, and later stated, 'In making this speech I intended to violate the Selective Service Act.' [Page 40.]

* * * * *

"Here appellant admits that he agreed in every way possible to assist and support non-registrants. At an open meeting he advocated refusal to register. His repeated letters state that he counseled men of draft age to refuse registration. Such actions, if carried out extensively, might well nullify the law. Appellant may attack the Selective Service Act of 1948 from every platform in America with impunity, but he cannot, under the guise of free speech, nullify it by disobedience to its express provisions [pages 41-42]."

I want no misunderstanding of my position. The record shows, as I said earlier in this paper, that "I profoundly believe that no man should be discriminated against because of his color. I am equally convinced that no man should be protected by his color." As I see it, Carmichael is being protected by his color. This immunity, tacitly granted for that reason to a demagogue who is giving aid and comfort to the enemy, seems to me intolerable.

"No man is above the law and no man is below it"—no man is below the law and no man is above it.

gfb
A PLAN FOR PEACE IN THE
MIDDLE EAST

Mr. GRUENING, Mr. President, earlier today I was highly honored by being presented with the Hadassah Myrtle Wreath Award which has previously been conferred on such distinguished Americans

as Senator MARGARET CHASE SMITH, of Maine; Dr. James Bryant Conant, former president of Harvard University; Mary Ingraham Bunting, president of Radcliffe College; Robert Frost, the noted poet; Fannie Hurst, novelist; Marian Anderson, the internationally known singer; Esther Peterson, Assistant Secretary of Labor; Mary Lasker, philanthropist; and others. The award read:

Myrtle Wreath Achievement Award presented by Hadassah to Senator Ernest Gruening in recognition of his distinguished government service and his dynamic efforts to achieve economic and social progress for all Americans, and peace in the world.

In accepting the award, I delivered an address entitled "A Plan for Peace in the Middle East."

It is my deep feeling, after studying the acute and recurring problems of the Middle East, that a solution and a way to permanent peace must and can be found. I have proposed one. It is unthinkable that every effort should not be made to put a stop to the inevitable recurrence of war in that region, on one side of which are the forces of freedom and democracy and on the other side the forces of communism and totalitarianism. Here is a great opportunity for the United States to lead the way by publicly enunciating and then implementing a policy which is wholly consistent with all our professions and avowed purpose throughout the world.

I ask unanimous consent that my address, entitled "A Plan for Peace in the Middle East," be printed in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

A PLAN FOR PEACE IN THE MIDDLE EAST

For nearly 20 years, in one area on earth, there has been no peace.

That area is the Middle East.

In that part of the world, at least 10 nations, with a combined population of over 90 million people, occupying an area of about 4 million square miles, have declared and continued a state of war, and have, for two decades, poised a constant military threat to one little nation containing 2 million people, confined to an area of less than 8000 square miles.

That little country is Israel.

The nations which have declared unremitting war against it include Egypt, Syria, Lebanon, Iraq, Saudi Arabia, Jordan, Libya, Algeria, Morocco, Sudan and several lesser principalities and shiekhdoms such as Kuwait.

These belligerents have publicly, loudly and repeatedly declared their purpose to wipe Israel off the face of the earth and to exterminate its people.

Events in the Middle East in the past 20 years have shown clearly that these bellicose Arab nations are not uttering empty threats but purpose to back their hostile words with equally hostile deeds.

First, was the constant harassment of Israel's borders by its neighbors with, not only the pillage of Israeli lands and killings of Israeli farmers, but also the constant fear with which the Israelis living on the border were forced to contend as they went about their daily tasks.

Immediately after the armistice of 1949—which specifically prohibited all warlike or hostile actions between the parties, Egypt and its Arab allies began an unrelenting and constantly intensified blockade against Israel.

After his seizure of the Suez Canal in 1956, Egypt, under the leadership of dictator

¹⁵ 250 U.S. 616 (1919).

¹⁶ 251 U.S. 466 (1920).

¹⁷ 252 U.S. 239 (1920).

¹⁸ 249 U.S. 204 (1919).

¹⁹ 249 U.S. 211 (1919).

²⁰ 268 U.S. 652 (1925).

²¹ 274 U.S. 357 (1927).

²² 178 F. 2d 38 (6th Cir. 1949), aff'd without opinion, 340 U.S. 857 (1950), rehearing denied, 340 U.S. 893 (1950).

²³ 233 F. 2d 171 (2d Cir. 1956).

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Gamal Abdel Nasser, denied the transit through the canal not only of Israeli ships but also of all other ships of whatever nation carrying goods either to or from Israel.

At the same time, Nasser gave the Soviet Union what it had for centuries eagerly sought—a foothold in the Middle East and the ultimate possibility of securing a warm weather port. With the massive infusion of Soviet weapons into Egypt, the latter became increasingly dependent upon the Soviet Union for the maintenance and supply of these weapons.

In a report I made to the Senate Committee on Government Operations in 1963, after a study trip to the Middle East, I stated:

"Today, militarily, Egypt is completely dependent on Soviet bloc countries. Colonel Nasser has maneuvered himself into the position of being completely dependent on Communist Russia for a continued flow of arms and parts . . . Syria and Iraq are in the same position."

The tragic events of the past six months have proved the validity of that assessment.

Never before have so many nations declared perpetual war against one. This is a condition which is unique and unprecedented in history.

Never before have the odds in favor of these hostile nations against their one intended victim been so great.

For let there be no mistake. The June Six Day War—however well Israel acquitted itself—has not lessened the danger of further Arab aggression. Already President Nasser's vituperative threats against the existence of Israel have resumed. Already the flow of Soviet arms into the Arab nations has resumed. Neither the Arab nations nor their supporter, Soviet Russia, have learned the lesson of 1967 any more than they learned the lesson of 1956.

All during these last 20 years—existing as it has under the unceasing threats and active hostility of neighbors on all its borders—the State of Israel not only has survived as a nation, but has set an example of freedom and democracy which likewise is unique among the seventy-odd nations that have been born and have achieved independence in the wake of the great anti-colonial revolt which followed World War II.

While many of these newly emerged nations are scarcely viable, with many in the grip of dictatorships, Israel alone has stood out like a shining beacon as a vibrant example of liberty, democracy, and of economic and social progress.

It alone in the Middle East represents an oasis of enlightenment in a desert of backwardness and barbarism.

Among the Arab States, it is the only exemplification of that basic principle so much cherished by the United States and by other free countries, the principle of government by consent of the governed. Indeed, it can truly be said that Israel was created and developed in the image of the United States, with its respect for individual rights and freedoms.

When I made my trip to the Middle East for the Senate Committee on Government Operations several years ago, to study the workings of our foreign aid program, that fact was clearly confirmed. I found there validation of an analysis of foreign aid made some six years ago in the quarterly magazine "Foreign Affairs" by John Kenneth Galbraith. Galbraith, as is well known, is a distinguished economist, one of the foremost in the world, Professor of Economics at Harvard University, author of several important books in his field and was, some years ago, United States Ambassador to India. In his article—which was an argument in support of the foreign aid program of the United States—Mr. Galbraith outlined four conditions which he considered basic to the success of our foreign economic aid program in any given country.

First, the recipient country should have a high degree of literacy and should be governed by a knowledgeable group of public officials—an elite, if you will—who know how to receive the sums of money and fulfill the obligations which the acceptance of foreign aid should entail.

Second, this governing group, or elite, would have to be honest, so that the economic aid given would not be stolen or otherwise misappropriated. Unfortunately, this has not always been the case with some of the countries receiving United States economic aid.

Third, in addition to being competent and honest, the governing group would have to have a sense of social consciousness so that the funds received as part of the foreign aid program would not go to the privileged few—to the oligarchs—as has happened in various other recipient countries, but would be distributed equitably through all the layers of society.

Fourth, and finally, the recipient country would have to have a sense of destiny, a sense of direction, a declared purpose and goal.

Galbraith concluded that, of the many countries which had been the recipients of United States foreign economic aid, only one fulfilled all four of these qualifications.

That country was Israel.

These facts entitle Israel to special consideration from those countries—like our own—which profess to wish the establishment of freedom and democracy wherever possible all over the world.

It is especially remarkable that Israel has achieved this unique eminence in spite of the unceasing harassment of its unrelenting enemies. Let it be noted, also, that Israel—because of these enemies—has had to expend substantial sums on arms and weapons in preparing for its own defense sums which it could much more usefully have expended on its own economic and social development.

Despite these handicaps, Israel has established a viable economy and a socially enlightened state. But it has done more than that. Israel has, during all these years, thrown open its doors to the harassed, persecuted and unwanted Jews from all over the world who wished to leave the countries of their disadvantage to find refuge and hope for a new life in the one country which has welcomed them.

In and of itself, this mission of mercy which Israel is performing—a major achievement unprecedented in history save only, perhaps, in the United States—would justify the establishment and permanence of Israel and its defense by free nations everywhere.

In addition to this constant and continuing boycott, border warfare, and harassment, Israel, in its short recent lifetime has been subjected to three major wars.

First, there was the war in the late forties when Israel's borders were supposedly established. They were, even then, very inadequate for its needs and were intended only to mark the cease-fire line.

Second, there was the war in the middle fifties when Israel, together with Britain and France, also our traditional allies at the time, moved militarily to counter Nasser's aggressive and illegal seizure of the Suez Canal. It should ever be a cause of regret that it was the United States, under the mistaken policies of John Foster Dulles, which moved against these three free nations, took the side of Nasser, went to the United Nations, and demanded sanctions against these countries. The United States thus supported the illegal and ruthless actions of Egypt's dictator and indeed placed itself in bed with Soviet Russia.

In the following years, the United States' mistaken policy continued to supply economic support to Egypt's Gamal Abdel Nasser, despite the fact that his every policy and action were contrary to the United States' professed objectives and purposes.

During those years, he was receiving arms from Russia.

During those years, he had invited and given hospitality to ex-Nazi scientists who, having escaped their just fate in a post-Nazi Germany, were invited by Nasser to come to Egypt to help him build sophisticated weapons whose only purpose was for Nasser's use in destroying Israel.

During those years, Nasser carried on an undeclared war in Yemen at a cost estimated by our military men of one-half million dollars a day, diverting for that purpose the funds given him by the United States for the economic development of his country to benefit Egypt's wretchedly poor.

During those years, he showed his allegiance to the Communists by giving aid and comfort to the Communists in the Congo.

During those years, he attempted to pour oil on the brush fire in Cyprus in order to intensify the struggle there between the Greeks and the Turks.

During those years, his troops shot down an unarmed United States plane, killing two of its fliers.

During those years, he countenanced the burning of the John F. Kennedy library in Cairo.

During those years, he encouraged his neighbors in Libya to request the United States to abandon its important Wheelus Air Force base.

As a result of those actions, some of us in the Senate sought repeatedly to change the United States' policy of aid to Nasser. At that time we were repeatedly told by officials of our State Department that Nasser was making threats against Israel only for home consumption, that he really did not mean it, and that if Nasser fell, he would be replaced by someone much worse. We did not accept these attempted discrediting of Nasser by our State Department and continued to press for a more realistic policy.

The events in early June 1967 should have done much to belie the words that Nasser's threats were empty ones and that he really did not intend to move militarily against Israel.

In the Senate, finally, we succeeded in inserting in the foreign aid bill an amendment which would deny economic aid to Nasser. Unfortunately, in order to have this amendment adopted, we had to agree to the insertion of a qualifying clause to the effect that this aid would be withheld unless the President found that it was in the national interest to continue such aid.

For some mysterious reason, that loophole was always utilized and United States economic aid to Nasser's Egypt continued.

The loophole was utilized until last year when Nasser exceeded his previous acts of malfeasance by diverting some of the grain he had received from the United States to some of the Iron Curtain countries. Then an aroused Congress was able to cut off aid to Nasser, and to insert and secure the enactment of the amendment without the qualifying, indeed the nullifying, clause for which I and some of my colleagues in the Senate and House had worked.

When, after his June 1967 fiasco, Nasser, and some of his Arab allies, broke diplomatic relations with the United States, we in the Congress were further able to secure the adoption of an amendment forbidding aid to any country which had broken relations with the United States and that, even if there were a resumption of relations, aid could not be resumed without a new negotiation of aid agreements.

It is to be hoped that this aid to Nasser will cease until such time as there is a complete cessation of his oft-proclaimed policies of aggression.

That aggression was escalated to all-out armed attack against Israel last June.

The Arab attack was preceded by the closing of the Straits of Tiran at the entrance of the Gulf of Aqaba. This would have meant the strangulation of Israel. It was accom-

paned by the mobilization of the armed forces of Egypt, Syria, and Jordan with the support of the other Arab States. Its purpose was to carry out the repeatedly declared purpose to destroy Israel once and forever and to drive its inhabitants into the sea.

The little King of Jordan had for years been receiving of massive aid from the United States. Indeed, a large part of his budget has been paid by United States taxpayers on the mistaken assumption—or hope—that his attitude was a little less rabid than the violently expressed intentions of the other Arab States. Thus Jordan was created, conceived of and supported by the United States as a kind of buffer state against Arab aggression.

But just as the State Department was woefully mistaken in underestimating the intentions of Nasser, so was it mistaken also in underestimating those of King Hussein of Jordan.

When Nasser proceeded to close the Straits of Tiran and to mobilize against Israel, King Hussein rushed to embrace him and to join his cause.

Israel had clearly warned King Hussein that if he did not mobilize, if he did not prepare to attack, he had no need to fear Israeli troops.

But Hussein, at that crucial moment, showed his true colors. He mobilized his troops and issued secret orders—which his troop commanders neglected to destroy—that every man, woman and child in Israel in the areas which the Jordanian troops conquered were to be put to the sword.

On March 26, 1957, Secretary of State John Foster Dulles had stated that an arbitrary request for the withdrawal of United Nations forces in the Middle East could not unilaterally be made in Egypt. Despite that statement, Nasser asked for the withdrawal of United Nations forces and the United Nations complied.

After this happened and in the midst of a growing crisis in the Middle East, the United States conveniently forgot Mr. Dulles' statement and fumbled and bumbled trying to find some kind of a solution which would bring about a halt to the aggression.

Fortunately, the Israelis, unassisted, won one of the most brilliant victories in the annals of military history. In so acting, Israel saved the United States from profound embarrassment. Had the Arabs won, there would have been a ghastly slaughter of Israeli men, women and children which the United States would no doubt have deplored—and would have joined in the adoption of posthumous condemnatory resolutions in the United Nations against the Arab nations.

As a result of this overwhelming victory, it was to be expected that the Arab States would have learned their lesson.

One would have thought that after the debacle the Arab States suffered in June 1967 they would have been willing to forego their 19-year war against Israel, recognizing not only Israel's right to exist and, indeed, instead of continuing to hate Israel and to plot its destruction, they would emulate Israel by concentrating on educating their people, sanitizing them, ridding them of disease, irrigating their arid lands, building up a more viable economy and encouraging social progress.

But they have done nothing of the kind.

They have continued in their belligerence and have refused to face up to realities.

Not only have the Russians poured arms back into these Arab countries to take the place of the armaments lost in battle to the Israelis, but the Arabs have made it clear that they intend to resume their aggression at the first available opportunity.

A basic question now confronts the United States and the rest of the Free World.

Shall the events of the last 19 years in the Middle East be repeated again and again?

Shall perpetual war be a chronic condition there?

Or, can realistic steps now be taken to establish peace in that important area?

It is crystal clear that there is no intent or purpose on the part of the Arab nations, or on the part of the Soviet nation, to achieve this objective.

The only hope lies with the United States.

As I have said, Israel, supremely, and almost alone of the nations of the earth, embraces the principles and concepts in which the United States professes belief. Therefore, Israel is vital to the interests of the United States, for it serves as an example to other nations of what the United States professes to seek throughout the world.

Parenthetically, I may say at this point that at the present time the United States is deeply engaged in a war in Southeast Asia. I wholly disapprove of the United States' military engagement in that war, but that is not pertinent to this discussion. What is pertinent is that the United States is allegedly in Southeast Asia with its vast military might to establish there the freedom and democracy of the people of South Vietnam—a people who have never enjoyed it and who have not shown clearly that they want it.

On the other hand, in Israel, we have a living example of a nation that has lived up to all these high purposes and ideals.

What can be a sounder policy for the United States to pursue—if we are true to our professions—than to help Israel maintain its democracy and its survival?

How shall this be done?

I propose a three-pronged policy for the United States to pursue to bring about peace in the Middle East, not only in its own best interests but in the interest of peace throughout the world.

First, the United States should propose entering into a mutual security treaty with Israel. This is a policy which the United States pursues in other parts of the world, where United States interests are not nearly as crucial as they are in the Middle East.

Thus the United States has mutual security treaties with Nationalist China, Korea and the Philippines. It is not intended, of course, by any such mutual defense treaty to commit the United States to the sending of troops to the Middle East. I would oppose that. The United States should taper off its role as global policeman and of sending our young men far afield to fight and die when the United States security is not threatened and alternative non-military solutions are available. Moreover, as Israel made abundantly clear during the 1967 crisis, Israel wants no United States troops there. It proved in June 1967 that given the wherewithal to fight, Israeli troops are well able to give a very good accounting for themselves on the field of battle. The United States should supply whatever arms are necessary.

A mutual security pact between the United States and Israel would be an effective deterrent to Arab aggression and it would by implication place over that country the effective defense umbrella of the United States Sixth Fleet—which would really not need to go into action. Its presence, backed by a treaty, would suffice.

Second, in the face of the determination of the Soviet Union to continue to supply arms to the Arab nations in ever increasing amounts, the United States should offer to give whatever arms are needed to Israel to even its military defensive strength. Surely if the United States can give arms to Jordan—which has proved decisively in June that it would use those arms to carry on aggression, it can do no less than to give arms to Israel for its defense—at least until the Soviet Union desists in its present policy

of engaging in an arms race in the Middle East on the side of the Arab nations, to the great disadvantage of Israel, which is so clearly aligned on the side of the West.

Such a policy of giving arms to Israel is especially needed at this time in view of the changed attitude of France, which now refuses to supply arms to Israel, and has lifted the embargo on supplying arms to Arab countries.

Third, it is also important that the United States buttress Israel's determination not to give up any territory occupied by it in the Six Day War unless and until, at the very least, the Arab nations declare unmistakably that they are no longer at war with Israel and are willing to negotiate directly with Israel to arrive at binding agreements designed to ensure lasting peace in the Middle East. Unless such assurances are unmistakably binding it could be the height of folly for Israel to give up the new post 1967 war boundaries which are essential to its defense. The older boundaries made Arab aggression all too easy. When that day comes—that the Arab nations irrevocably abjure war against Israel—the United States should be prepared to assist economically all the nations in that area which sincerely desire to build up their own economies and to better the economic and social lot of their own people.

So the Arab nations would also be the beneficiaries of our economic aid which some of them sorely need once they departed from their misguided and costly policy of aggression.

It is high time that the nations in the Middle East heeded the Biblical admonition that nations "shall beat their swords into plowshares, and their spears into pruning hooks."

So is the injunction that "nation shall not lift up sword against nation, neither shall they learn war any more."

In its own enlightened self-interest—and not because it favors one nation in the Middle East as opposed to another—the United States should strive with dedication and realistically to bring peace to that sorely troubled area of the world, and publicly to declare and adopt a policy that will ensure that the outstanding exemplar of freedom and democracy among the newborn nations shall not perish from the earth.

That policy—sincerely proclaimed and effectively implemented—will bring peace to the Middle East.

DUTY-FREE TREATMENT OF LIMESTONE

Mr. LONG of Louisiana. Mr. President, I shall send word to the two Senators from North Carolina that the Senator from Delaware [Mr. WILLIAMS], as well as the Senator from Tennessee [Mr. GORE], very strongly object to the amendment that was offered yesterday, referred to as the Duke endowment amendment. The amendment would help Duke University as well as other schools and certain charities. The RECORD of yesterday fully explains it.

Therefore, I find it necessary, in due course, to ask that this bill be reconsidered and the amendment withdrawn, with the assurance that we will study this matter next year; and if we can agree on it, we will bring out legislation to correct what we believe to be a problem that should be acted upon. Having done so, we would then propose to pass a bill without that amendment.

I now yield to the Senator from Delaware.

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Mr. WILLIAMS of Delaware. Mr. President, I appreciate the attitude of the distinguished Senator from Louisiana.

There may be some merit to the argument of Duke University, but it should first be considered by our committee.

I have been advised overnight that the amendment agreed to yesterday not only would take care of its problem but it would also open a wide loophole with regard to many other existing trusts. The Treasury Department is strenuously opposed to its being adopted in its present form.

Perhaps we can come up with an amendment to correct the situation, but we all agree that the floor of the Senate is not the place to rewrite tax legislation of such importance.

I would join the Senator in stating that if the amendment is withdrawn it will be withdrawn without prejudice and that it will be placed on the agenda for early consideration by our committee.

INCOME TAX TREATMENT OF CERTAIN DISTRIBUTIONS PURSUANT TO THE BANK HOLDING COMPANY ACT OF 1956—CONFERENCE REPORT

Mr. LONG of Louisiana. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4765) relating to the income tax treatment of certain distributions pursuant to the Bank Holding Company Act of 1956, as amended. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER. The report will be read for the information of the Senate.

The assistant legislative clerk read the report.

(For conference report, see House proceedings of December 7, 1967, pages H16503-H16504, CONGRESSIONAL RECORD.)

The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

Mr. LONG of Louisiana. Mr. President, there was one particular item on which the Senate thought compelled to yield to in conference, which was somewhat controversial.

The Senator from Delaware [Mr. WILLIAMS] had always felt very strongly that when we require someone to divest themselves of stock, we should follow the precedent of the DuPont Co. bill. Of course, when that measure was passed, the RECORD will show it involved a great deal of courage and statesmanship on the part of the Senator from Delaware because he was unwilling to go as far in providing relief to the company as were others, including myself, and including at that time, the junior Senator from Delaware, Mr. Frear.

The Senator from Delaware [Mr. WILLIAMS] insisted that that would be an appropriate occasion for the shareholders of the company to pay a capital gains tax where there had been considerable appreciation in the value of the stock.

That is what the shareholders of the company were required to do when we passed legislation to give them relief.

However, there certainly is adequate precedent for the position of the distinguished Senator from Illinois [Mr. DIRKSEN], and it appears to me that when we pass a bill to force a company to divest itself of stock we should not charge the shareholders capital gains tax by reason of that fact. They should divide the cost or other basis they had for the original stock between that stock and the stock distributed to them in accordance with the fair market value of each, and then if they subsequently sell their stock or dispose of it, they should pay their tax. That was the view of the House conferees and the majority view in the Committee on Finance.

I regret that one cannot agree with everybody on a controversial amendment, but it was the view of the House Members that it would not be proper to impose a tax at the time of distribution. That is the only significant point, I believe, upon which the Senate conferees yielded.

Insofar as the remainder of the bill is concerned, it might be said that this was a satisfactory conference from the Senate's point of view.

Mr. WILLIAMS of Delaware. Mr. President, I object to this conference report. Stated very simply, it provides a special tax credit for one taxpayer and one company. Much has been said with respect to Financial General's having 14,000 stockholders and that these stockholders deserve the consideration of Congress. As near as can be determined 13,999 of those stockholders are not affected in the least by the bill which is before us. One stockholder is affected, and if this conference report is agreed to in the form in which it now is, this stockholder would receive a \$9 million tax-free distribution as a dividend on stock for which he only paid \$1 million. In other words, he will have an \$8 million profit on the distribution, and this bill provides that it will be completely tax free.

I realize that we are close to Christmas and that we should all have the Christmas spirit, but I think the conferees have carried this spirit a little too far, even though we all feel charitably inclined at this particular time of the year.

Mr. President, I call attention to one other point which I wish to explain for the RECORD. It is true that in 1956 Congress passed the Bank Holding Company Act, at which time it ordered the banks involved owning over 25 percent of the stock in a series of banks to dispose of this stock, and it allowed them to make that distribution tax free. Right or wrong, that was done at that time. However, in passing that bill there was a special item in the 1956 act which exempted this one company, by formula and not by name, from the provisions of the Bank Holding Company Act. It, therefore, did not have to distribute its holdings. At that time it had about \$365 million in deposits. This company took advantage of the special exemption and accumulated over \$1 billion worth of assets. It has expanded its holdings in many companies which were nonrelated to bank-

ing. Now in 1966 as the result of its large investments in the nonrelated companies it was ordered to divest, they made themselves responsible to the act.

I will quote Mr. C. Canby Balderston, Vice Chairman of the Federal Reserve Board, on this point when testifying before a congressional committee on June 3, 1965:

The bill now before this committee (H.R. 7372) is designed to eliminate the most objectionable and least defensible of the six special exemptions contained in the Holding Company Act. Briefly stated, this exemption makes that act inapplicable to any company that was registered prior to May 15, 1955, under an entirely separate statute, the Investment Company Act of 1940, or to any company that is affiliated with such a registered investment company, unless the investment company or its affiliate owns directly 25 percent or more of the shares of each of two or more banks.

As far as the Board knows, one corporation only, Financial General, enjoys this exemption. It has been operating as a bank holding company without being subject to the act. It holds a majority interest in 19 banks in Georgia, Maryland, New York, Virginia, and Washington, D.C.; 25 percent or more of the stock of 2 banks in Tennessee and Maryland; and 14 to 20 percent of the stock of 5 banks in Illinois, Virginia and Tennessee. Of the 26 banks in the group, 17 have been acquired since enactment of the Holding Company Act. These 26 banks have deposits aggregating over \$1 billion whereas at the end of 1955, the deposits of the Financial General banks totalled about \$365 million—roughly one-third as much.

From the above quotation it seems clear that in 1956 Financial General succeeded in obtaining a wholly unjustified exemption to the new law and it also seems clear that from 1956 to 1965 it took advantage of this exemption with vigor and enthusiasm.

Thus, it is ingenuous to say that Financial General is in the same position as those bank holding companies which were forced to divest under the original 1956 act. On the contrary, we are dealing with a corporation which obtained a special statutory exemption—in 1956—and then exploited that exemption for all it was worth and for as long as it could. The bill agreed on by the conference committee will now permit completely tax-free distributions of the property acquired in this way. Thus, Financial General is getting a very handsome reward for its ability to get a special provision in the 1956 act. In my opinion this kind of congressional action is shattering to citizen morale in the enforcement of both the banking laws and of the income tax laws.

If Congress enacted no relief statute at all, of course, distributions of banking or nonbanking property would be ordinary dividends to all the shareholders. I want to make it clear that this is not the course of action I urge. The proposal I submitted would simply provide for a capital gains tax on those who actually had a profit in hand. It must be observed that as to many—perhaps nearly all—of the small shareholders, no tax would be due on that approach. However, there is one large shareholder who, under this approach, would receive about \$9 million of distributions with respect to stock which cost him only about \$1 million. It is true that, under my amendment, which